

**NOTICE OF NEW TERMS AND CONDITIONS**

THIS INSURANCE POLICY MAY DIFFER IN TERMS AND/OR CONDITIONS TO LANGUAGE INCLUDED IN POLICIES PREVIOUSLY PURCHASED. PLEASE READ THIS POLICY WORDING CAREFULLY, AND ASK YOUR BROKER OR AGENT IF YOU REQUIRE ANY CLARIFICATION.

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**PARAMOUNT CLAUSE**

*Notwithstanding any other provision in this policy or any endorsement or attachment hereto, Underwriters will have no duty to defend or indemnify the Named Insured or any Additional Insureds or Indemnitees (as those terms are defined below) under this policy against any actual or anticipated claim for liability, loss, damage, costs, legal fees or expenses to which this policy does not apply.*

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In consideration of the payment of the premium and subject to all the terms, conditions and exclusions of this policy, as specified in Part I, Part II and Part III, and any and all endorsements appended hereto, Underwriters hereby agree to provide insurance coverage as set forth below.

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**PART I - INSURING AGREEMENT**

The insurance provided under this Part I is subject in all respects to the Exclusions set out in Part II and the General Conditions set out in Part III here following.

**1. BODILY INJURY AND PROPERTY DAMAGE**

Underwriters will pay on behalf of the **Named Insured** all sums which the **Named Insured** shall become legally obligated to pay as compensatory damages because of:

**bodily injury, or**

**property damage**

to which this insurance applies, caused by an **occurrence** which takes place within the **policy territory**, and Underwriters shall have the right and duty to defend any suit against the **Named Insured** seeking such damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any **claim** or suit as it deems expedient, but Underwriters shall not be obligated to pay any **claim** or judgment or to defend any suit after the applicable limit of the Underwriters liability has been exhausted by payment of judgments or settlements and the discharge of its defence and payment obligations as provided in Part III, Section 11 below.



2. **CONTRACTUAL LIABILITY COVERAGE**

Underwriters will pay on behalf of the **Named Insured** all sums which the **Named Insured** shall become legally obligated to pay as compensatory damages because of **bodily injury**, or **property damage**, liability for which the **Named Insured** has assumed in a contract or agreement that is an **incidental contract**, provided the **bodily injury** or **property damage** occurs subsequent to the execution of the contract or agreement, subject to the following:

- A. The definition of **incidental contract** set out in Part III is extended to include any written contract or agreement arising out of or relating to the conduct of the **Named Insured's** business, but only with respect to operations performed by the **Named Insured** or to acts or omissions of the **Named Insured** in connection with the **Named Insured's** operations.
- B. The insurance afforded with respect to liability assumed under an **incidental contract** is subject to the following additional exclusions:
1. to **bodily injury** or **property damage** for which the **Named Insured** has assumed liability under any **incidental contract**, if such injury or damage occurred prior to the execution of the **incidental contract**;
  2. if the **Named Insured** is an architect, engineer or surveyor, to **bodily injury** or **property damage** arising out of the rendering or failure to render professional services by such **Named Insured**, including:
    - a. the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and
    - b. supervisory, inspection or engineering services;
  3. if the **Indemnitee** of the **Named Insured** is an architect, engineer or surveyor, to the liability of the **Indemnitee**, his agents or employees, arising out of:
    - a. the preparation or approval of or the failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
    - b. the giving of or the failure to give directions or instructions by the **Indemnitee**, his agents or employees, provided such giving or failure to give is the primary cause of the **bodily injury** or **property damage**.
  4. to any obligation for which the **Named Insured** may be held liable in an action on a contract by a third party beneficiary for **bodily injury** or **property damage** arising out of a project for public authority; but this exclusion does not apply to an action by the public authority or any other person or organisation engaged in the project.
  5. to **bodily injury** or **property damage** arising out of construction or demolition operations, within 50 feet of any railroad property, and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; but this exclusion does not apply to liability under sidetrack agreements.



**3. BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE  
(Including Completed Operations)**

The insurance for **property damage** liability applies, subject to the following additional provisions:

- A. Exclusions (10) and (12) set out in Part II are replaced by the following:
1. property owned or occupied by or rented to the **Named Insured**, or, except with respect to the use of "Elevators", to property held by the **Named Insured** for sale or entrusted to the **Named Insured** for storage or safekeeping;
  2. except with respect to liability under a written sidetrack agreement or the use of "Elevators":
    - a. property while on premises owned by or rented to the **Named Insured** for the purpose of having operations performed on such property by or on behalf of the **Named Insured**;
    - b. tools or equipment while being used by the **Named Insured** in performing his operations;
    - c. property in the custody of the **Named Insured** which is to be installed, erected or used in construction by the **Named Insured**;
    - d. that particular part of any property, not on premises owned by or rented to the **Named Insured**;
      - (i) upon which operations are being performed by or on behalf of the **Named Insured** at the time of the **property damage** arising out of such operations; or
      - (ii) out of which any **property damage** arises; or
      - (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the **Insured**;
  3. with respect to the **completed operations hazard** and with respect to any classification stated in this policy or in the Company's manual as including **completed operations**, to **property damage** to work performed by the **Named Insured** arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith.
- B. This Broad Form Property Damage Liability Coverage shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the **Named Insured**, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance provision in Section 16 of Part III of this policy is amended accordingly.



**4. FIRE LEGAL LIABILITY COVERAGE - REAL PROPERTY**

With respect to **property damage** to structures or portions thereof rented or leased to the **Named Insured**, including fixtures permanently attached thereto, if such **property damage** arises out of fire,

- A. all of the exclusions of this policy, other than the Nuclear Energy Liability Exclusion (Section 24, Part II below), are deleted and replaced by the following:

This insurance does not apply to liability assumed by the **Named Insured** under any contract or agreement.

- B. The limit of **property damage** liability as respects this Fire Legal Liability Coverage - Real Property is \$50,000 each **occurrence** unless otherwise stated in the schedule of this endorsement.
- C. This Fire Legal Liability Coverage - Real Property shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof), available to the **Named Insured**, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance provision in Section 16 of Part III of this policy is amended accordingly.

**5. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE**

- A. Underwriters will pay on behalf of the **Named Insured** all sums which the **Named Insured** shall become legally obligated to pay as compensatory damages because of **Personal Injury** or **Advertising Injury** to which this insurance applies.

- B. This insurance does not apply:

1. to liability assumed by the **Named Insured** under any contract or agreement;
2. to **Personal Injury** or **Advertising Injury** arising out of the wilful violation of a penal statute or ordinance committed by or with the knowledge or consent of the **Named Insured**;
3. to **Personal Injury** or **Advertising Injury** arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication or utterance of the same or similar material by or on behalf of the **Named Insured** was made prior to the effective date of this insurance;
4. to **Personal Injury** or **Advertising Injury** arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning a person or organisation or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the **Named Insured** with knowledge of the falsity thereof;
5. to **Personal Injury** or **Advertising Injury** arising out of the conduct of any partnership or joint venture of which the **Insured** is a partner or member and which is not designated in the Declarations of this policy as a **Named Insured**;



6. to **Advertising Injury** arising out of:
  - a. failure of performance of contract, but this exclusion does not apply to the unauthorised appropriation of ideas based upon alleged breach of implied contract; or
  - b. infringement of trademark, service mark or trade name, other than titles or slogans, by the use thereof on or in connection with goods, products or services sold, offered for sale or advertised; or
  - c. incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
7. with respect to **Advertising Injury**:
  - a. to any **Named Insured** in the business of advertising, broadcasting, publishing or telecasting; or
  - b. to any injury arising out of any act committed by the **Named Insured** with actual malice;
8. to **Personal Injury** or **Advertising Injury** arising out of discrimination.

C. Additional Definitions

**Advertising Injury** means injury arising out of an offence committed during the policy period occurring in the course of the **Named Insured's** advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title or slogan.

**Personal Injury** means injury arising out of one or more of the following offences committed during the policy period:

1. false arrest, detention, imprisonment, or malicious prosecution;
2. wrongful entry or eviction or other invasion of the right of private occupancy;  
a publication or utterance:
  - a. of a libel or slander or other defamatory or disparaging material, or
  - b. in violation of an individual's right of privacy;

except publications or utterances in the course of or related to advertising, broadcasting, publishing or telecasting activities conducted by or on behalf of the **Named Insured** shall not be deemed **Personal Injury**.



**6. INCIDENTAL EMERGENCY MEDICAL LIABILITY COVERAGE**

The definition of **bodily injury** is amended to include **Incidental Emergency Medical Injury**.

**Incidental Emergency Medical Injury** means injury arising out of the rendering or failure to render, during the policy period, the following services:

- A. medical or nursing service or treatment provided on an emergency first-aid basis.
- B. this coverage does not apply to:
  - 1. any medical or nursing service or treatment provided on an on-going or continuing basis;
  - 2. any **Named Insured** engaged in the business or occupation of providing any of the services or treatments described under Sections A. or B.1. above;
  - 3. injury caused by any **Indemnatee** if such **Indemnatee** is engaged in the business or occupation of providing any of the services or treatments described under Sections A. or B.1. above.

**7. HOST LIQUOR LAW LIABILITY COVERAGE**

Exclusion 17 in Part II of this policy does not apply with respect to liability of the **Named Insured** arising out of the giving or serving of alcoholic beverages at functions incidental to the **Named Insured's** business, provided the **Named Insured** is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages.

**8. ADDITIONAL COVERAGE BY ENDORSEMENT**

In addition to the coverages provided in Sections 1 through 7 above, additional coverage may be provided by endorsement(s) to this policy. Such additional coverage shall be subject in all respects to the terms, conditions and exclusions contained in Parts I, II and III of this policy unless otherwise specifically provided therein.



## **PART II - EXCLUSIONS**

The insurance provided under Part I is subject in all respects to the Exclusions set out in this Part II and the General Conditions set out in Part III here following:

**This Policy shall not apply to, specifically excludes, does not provide coverage for and will not pay, in whole or in part:**

1. **any actual or anticipated claim for liability, loss, damage, costs legal fees, or expenses; and/or**
2. **any duty to defend a claim**

directly or indirectly caused by, arising out of, related to, or contributed to by, in connection with, or resulting from any one or more of the following exclusions. For the purpose of this Part II, the term **Named Insured** shall include any Additional Insureds hereunder and any **Indemnitee** of the **Named Insured** whose liability has been assumed in accordance with Part I, Section 2 of this policy.

1. **EXPECTED OR INTENTIONAL ACTS EXCLUSION**  
**bodily injury** or **property damage** expected or intended from the standpoint of the **Named Insured**. This exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property.
2. **ASSUMPTION OF LIABILITY IN CONTRACT EXCLUSION**  
**bodily injury** or **property damage** for which the **Named Insured** is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to:
  - A. coverage provided in Part I, Section II, of this policy; or to
  - B. liability that the **Named Insured** would have in the absence of the contract or agreement.
3. **FINES AND PENALTIES EXCLUSIONS**  
fines and/or penalties, whether imposed by statute, at law, under contract, or in equity, however described.
4. **PUNITIVE DAMAGES EXCLUSION**  
punitive damages, exemplary damages, aggravated damages, treble damages, or any damages resulting from the multiplication of compensatory damages, however described.
5. **OWN EMPLOYEES EXCLUSION**  
**bodily injury** to an employee of any **Named Insured** arising out of and in the course of the employment by any **Named Insured**, or to any **claims** of the spouse, partner, child, parent, legal guardian, brother or sister of that employee as a consequence of said **bodily injury**; this exclusion applies:
  - A. whether any **Named Insured** may be liable as an employer or in any other capacity; and
  - B. to any obligation to share damages with or repay someone else who must pay damages because of the injury.
6. **WORKER'S COMPENSATION OR OTHER BENEFITS EXCLUSION**  
any obligation for which the **Named Insured** or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;



**7. LEASED EMPLOYEES EXCLUSION**

- A. **bodily injury** to a leased employee of any **Named Insured** arising out of and in the course of employment by any **Named Insured**.
- B. A leased employee is defined as a person leased to the **Named Insured** by a leasing firm under a written contract or agreement between the **Named Insured** and the leasing firm to perform duties related to the conduct of the **Named Insured's** business.
- C. A leased employee shall not include a temporary worker. A temporary worker is defined as a person who is furnished to the **Named Insured** to substitute for a permanent employee on leave or to meet seasonal or to meet short term work load conditions.

**8. EMPLOYMENT RELATED PRACTICES EXCLUSION**

- A. Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury, or damage (including consequential **bodily injury**) in connection with **Wrongful Termination** of the **Named Insured's** employees and/or **Discrimination** involving the **Named Insured's** employees and/or **Sexual Harassment** of the **Named Insured's** employees.
- B. The following definitions apply to the foregoing:

"**Wrongful Termination**" means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment.

"**Discrimination**" means termination of an employment relationship or a demotion or a failure or refusal to hire or promote any individual because of race, colour, religion, age, sex, disability, pregnancy or natural origin.

"**Sexual Harassment**" means unwelcome sexual advances and/or requests for sexual favours and/or other verbal or physical conduct of a sexual nature that (1) are made a condition of employment and/or (2) are used as a basis for employment decisions and/or (3) create a work environment that interferes with performance.

**9. EMPLOYEE BENEFITS EXCLUSION**

- A. Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging any liability arising out of any act, error or omission of the **Named Insured**, or any other person or entity for whose acts, errors or omissions the **Named Insured** is legally liable in respect of the **Named Insured's Employee Benefits** including, without limitation, liability under the Employment Retirement Income Security Act of 1974, as amended;
- B. As used in this exclusion, the term "**Employee Benefits**" includes, without limitation, Group Life Insurance, Group Accident or Health Insurance, Profit-Sharing Plans, Pension Plans, Employee Stock Subscription Plans and Social Security Insurance.





**10. OWN PROPERTY EXCLUSION**

**property damage** to:

- A. property owned or occupied by or rented to the **Named Insured**;
- B. property used by the **Insured**; or
- C. premises sold, given away or abandoned by the **Named Insured** arising out of such premises or any part thereof;

**11. CO-OWNER EXCLUSION**

**bodily injury** or **property damage** to any **Co-owner of a working interest**.

"**Co-owner of a working interest**" means any person or entity working with the **Named Insured**, a Co-owner, joint-venturer, or mining partner, in mineral properties who participates in the operating expense of such properties or revenues therefrom, or who has the right to participate in control, development, or operation of such properties.

**12. INSURED'S WORK EXCLUSION**

**property damage** to work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; provided however, that this exclusion shall not apply to the extent that coverage is provided in an Endorsement to this policy.

**13. IMPAIRED OR NON-DAMAGED PROPERTY EXCLUSION**

**property damage** to **impaired property** or property that has not been physically damaged, arising out of:

- A. a defect, deficiency, inadequacy or dangerous condition in the **Named Insured's products** or the **Named Insured's work**; or
- B. a delay or failure by the **Named Insured** or anyone acting on behalf of the **Named Insured** to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to the **Named Insured's products** or the **Named Insured's work** after it has been put to its intended use;

**14. INSURED'S PRODUCTS EXCLUSION**

**property damage** to the **Named Insured's products** arising out of such products or any part of such products, provided however, that this exclusion shall not apply to the extent that coverage is provided in an Endorsement to this policy.

**15. WITHDRAWAL OR RECALL EXCLUSION**

damages claimed for the withdrawal, recall, inspection, repair, replacement, or loss of use of the **Named Insured's products** or work completed by or for the **Named Insured** or of any property of which such products or work form a part, if such products, work or property are withdrawn or recalled from the market or from use by any person or organisation because of any known or suspected defect or deficiency therein;

**16. VENDOR'S LIABILITY EXCLUSION**

**bodily injury** or **property damage** arising out of or in any way relating to the sale of goods or products manufactured, prepared or provided by a third party unless such goods or products have been assembled, fabricated or modified by the **Named Insured** or otherwise included or incorporated into the **Named Insured's** products.



**17. LIQUOR LIABILITY EXCLUSION**

**bodily injury or property damage** for which the **Named Insured** may be held liable:

- A. as a person or organisation engaged in the business, whether or not for profit, of manufacturing, distributing, selling or serving alcoholic beverages; or
- B. if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed:
  - i. by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage; or
  - ii. by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part ii of this exclusion does not apply with respect to liability of the **Insured** as an owner or lessor described in B above; provided further however, that this exclusion shall not apply to the extent that coverage is provided in an Endorsement to this policy.;

**18. WATERCRAFT EXCLUSION**

**bodily injury or property damage** arising out of or relating to the ownership, maintenance, operation, use, loading, unloading or entrustment of any watercraft, boat equipment, or trailers, owned or operated by, or rented or loaned to or chartered by or on behalf of an **Named Insured**; provided however, that this exclusion shall not apply to the extent that coverage is provided in an Endorsement to this policy.

**19. PROTECTION AND INDEMNITY AND CHARTERER'S LEGAL LIABILITY EXCLUSIONS**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage which would be recoverable by the **Named Insured** or any **Additional Insured** or **Indemnitee** hereunder:

- A. under any standard form of Protection and Indemnity insurance including contractual liability, or
- B. under any standard form of Charterer's Legal Liability insurance, including contractual liability,

whether or not such coverage(s) is/are in place, and including any and all extensions of coverage thereto, including but not limited to, **Additional Insured** provisions.



**20. MOBILE EQUIPMENT EXCLUSION**

**bodily injury or property damage** arising out of:

- A. the transportation of any **mobile equipment** by an **automobile** owned or operated by or rented or loaned to the **Named Insured**; or
- B. the use of **mobile equipment** in, or while in practice or preparation for, a prearranged or organised racing, speed or demolition contest or in any stunting activity;

**21. AUTOMOBILE AND AIRCRAFT EXCLUSIONS**

**bodily injury or property damage** arising out of the ownership, entrustment, maintenance, operation, use, loading or unloading of;

- A. any **automobile** or aircraft, owned or operated by or rented or loaned to the **Named Insured**; or
- B. any other **automobile** or aircraft operated by any person in the course of his or her employment by the **Named Insured**;

but this exclusion does not apply to the parking of an **automobile** on premises owned by, rented to or controlled by the **Named Insured** or the ways immediately adjoining, if such **automobile** is not owned by or rented or loaned to the **Named Insured**;

**22. ABSOLUTE POLLUTION EXCLUSIONS**

- 1. Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any **bodily injury or property damage** caused by, or contributed to, or arising out of the actual or threatened discharge, dispersal, release, seepage, or escape of **Pollutants**, or the movement or spread of **Pollutants** from one location to another; whether into or upon the land, the atmosphere or any water course or body of water, whether above or below ground; whether or not such is sudden or gradual; and/or whether or not such is accidental, intended, foreseeable, expected, fortuitous or inevitable, and wherever such occurs.

The word "**Pollutants**," wherever used in this Exclusion, means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and **Waste**. The term "**Waste**", wherever used in this Exclusion, includes any material to be stored, disposed of directly or through a third party, re-cycled, re-conditioned and/or re-claimed.

- 2. Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any governmental direction or request that the **Named Insured** or any **Additional Insured** or **Indemnitee** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants** in any way arising out of such actual or threatened discharge, dispersal, release, seepage, movement, spread, or escape, whether such results from the **Named Insured's** or any **Additional Insured's** or **Indemnitee's** activities or the activities of others, whether into or upon the land, the atmosphere or any water course or body of water, whether above or below ground; whether or not such is sudden or gradual; and/or whether or not such is accidental, intended, foreseeable, expected, fortuitous or inevitable, and wherever such occurs.
- 3. Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any **bodily injury or property damage** arising directly or indirectly from the **Clean-up** of **Pollutants**.

The word "**Clean-up**," wherever used in this Exclusion, means the cleaning-up, testing for, monitoring, removing, containing, treating, detoxifying or neutralising of **Pollutants** or their effects, whether or not any of the foregoing are or should be performed by the **Named Insured**, any **Additional Insured** or by others.



**23. SUB-SURFACE OPERATIONS AND WASTE SITE EXCLUSIONS**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any :

- A. Loss of, damage to or loss of use of property directly or indirectly resulting from subsidence caused by sub-surface operations of the **Named Insured**.
- B. Removal of, loss or damage to sub-surface oil, gas or any other substance.
- C. Any site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any waste materials or substance or the transportation of any waste materials or substances.

**24. NUCLEAR ENERGY AND HAZARDOUS PROPERTIES EXCLUSIONS**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any bodily injury or property damage:

- A. with respect to which a **Named Insured** is also a **Named Insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be a **Named Insured** under any such policy but for its termination upon exhaustion of its limits of liability; or resulting from the hazardous properties of nuclear material and with respect to which (a) any person or any organisation is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **Named Insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organisation;
- B. under any liability coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
  - i. the nuclear material (a) is at any nuclear facility owned by the **Named Insured** or operated by the **Named Insured** or on the **Named Insured's** behalf, or (b) has been discharged or dispersed therefrom;
  - ii. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by the **Named Insured** or on the **Named Insured's** behalf; or
  - iii. the injury, sickness, disease, death or destruction arises out of the furnishing by a **Named Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (iii) applies only to property damage to such nuclear facility and any property thereat.
- C. As used in this exclusion:
  - i. hazardous properties includes radioactive, toxic or explosive properties;
  - ii. nuclear material means source material, special nuclear material or by-product material;
  - iii. source material, special nuclear material and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - iv. spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
  - v. waste means any waste material (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (b) resulting from the operation by any person or organisation of a nuclear facility included within the definition of nuclear facility;



- vi. nuclear facility means:
  - a. any nuclear reactor,
  - b. any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilising spent fuel, or (iii) handling, processing or packaging wastes,
  - c. any equipment or device used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium, or uranium 233 or any combination thereof, or more than two hundred fifty (250) grams of uranium 235.
  - d. any structure, basin, excavation, premises or place prepared or used for storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- vii. nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- viii. with respect to injury to or destruction of property, the word injury or destruction includes all forms of radioactive contamination of property;

**25. WAR RISKS EXCLUSION**

**bodily injury or property damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing.

**26. THOMAS MILLER SPECIALTY TERRORISM & MALICIOUS ACTS EXCLUSIONS**

In no case shall this insurance cover any loss damage liability or expense caused by or relating to:-

- A. The attempt to or actual detonation of any explosive or the operation of any munition or other similar harmful device, including but not limited to biological &/or chemical device and/or computer virus.
- B. The act or attempted acts of any terrorist or group of terrorists, irrespective of their motives be they political, religious or other, or any person or group acting with a malicious intent.

**27. ASBESTOS-RELATED EXCLUSION**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with:

- A. any liability for property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury, at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibres or asbestos dust; or
- B. any obligation of the **Named Insured** to defend and/or indemnify any party because of damages arising out of such property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibres or asbestos dust; or
- C. any obligation to defend any suit or claim against the **Named Insured** alleging bodily injury sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury or property damage and seeking damages, if such suit or claim arises from bodily injury sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury or property damage resulting from or contributed to, by any and all manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibres or asbestos dust.



**28. SILICA EXCLUSION**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any **bodily injury** or **property damage** directly or indirectly caused by Silica.

**29. POLYCHLORINATED BIPHENYL (P.C.B) EXCLUSION**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any **bodily injury** or **property damage** directly or indirectly caused by Polychlorinated Biphenyl. The term Polychlorinated Biphenyl includes any derivative thereof.

**30. HEALTH HAZARD EXCLUSION**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any **bodily injury** arising out of continuous, intermittent or repeated exposure to, ingestion, inhalation, or absorption of, any substance, material, product, waste, emission, radioactive substance noise or environmental disturbance where the **Named Insured** is or may be liable as a result of the manufacture, production, extraction, sale, handling, utilisation, distribution, disposal or creation by or on behalf of the **Named Insured** of such substance, material, product, waste, emission, radioactive substance, noise or environmental disturbance; nor does this policy apply to liability arising out of any repetitive stress, repetitive strain or cumulative injury.

**31. THOMAS MILLER SPECIALTY MICROORGANISM EXCLUSION**

It is agreed that this policy does not apply to exposure to algae, archae, bacteria, fungi, lichen, plasmids, protozoa, any virus, mold or any similar organism or any actual, or alleged, disease or bodily injury involving the presence, existence, detection, removal, elimination or avoidance of such organisms or exposure to them.

**32. SECURITIES AND FINANCIAL INTEREST EXCLUSIONS**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with the purchase or sale, the offer, solicitation, or advertising for the purchase or sale, or the depreciation or decline in price or value, of any security, debt, bank deposit, or financial interest or instrument.



**33. DIRECTORS AND OFFICERS EXCLUSIONS**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any:

- A. liability arising out of an **Named Insured's** capacity, duty or responsibility as an Officer, Director or Trustee of a corporation by reason of a breach of fiduciary duty or improper conduct or conflict of interest in the performance of an **Named Insured's** duties, responsibilities or accountability as an Officer, Director or Trustee, including, without limitation, any actual or alleged misstatement, misleading statement, gain of personal profit or advantage to which the **Named Insured** was or is not entitled legally, any dishonest act, or bad faith conduct, in the **Named Insured's** capacity as an Officer, Director or Trustee, or with respect to the capital or assets of the corporation, or any action taken beyond the scope of the **Named Insured's** authority as an Officer, Director or Trustee;
- B. liability arising out of or incident to any alleged violation(s) of any federal or state law regulating, controlling and governing stock, bonds or securities of any type or nature, including without limitation The Securities Act of 1933, The Securities Exchange Act of 1934, The Trust Indenture Act of 1939, The Public Utility Holding Company Act of 1935, The Investment Company Act of 1940, The Investment Advisers Act of 1940, and the so called "Blue Sky" Lws of various States and other jurisdictions;
- C. liability arising out of or incident to any alleged violation(s) of any federal or state law regulating, controlling and governing antitrust or the prohibition of monopolies, activities in restraint of trade, unfair methods of competition or deceptive acts and practices in trade and commerce including, without limitations, the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act and the Harrt-Scott Rodino Antitrust Improvements Act;
- D. liability of any Officer, Director or Trustee arising out of or asserted in a shareholder's derivative action; or
- E. liability arising out of or contributed to by the dishonesty or infidelity of the Named Insured; or
- F. liability which would be payable under the terms of coverage of a Directors and Officers Liability Insurance Policy or a Directors and Company Reimbursement Indemnity Policy of the type issued by stock insurance companies of the United States, as if any **Named Insured** had obtained such coverage in an amount sufficient to pay the full amount being claimed against the **Named Insured**, whether or not any **Named Insured** has obtained such coverage.

**34. ERRORS AND OMISSIONS EXCLUSIONS**

Underwriters shall have no obligation to defend or indemnify with respect to any claim or suit alleging or asserting in any respect loss, injury or damage in connection with any negligence, error or omission, malpractice or mistake arising out of or relating to the rendering of or failure to render any **professional services** committed or alleged to have been committed by or on behalf of the **Named Insured** in the conduct of any of the **Named Insured's** business activities. **Professional services** includes but is not limited to the preparation or approval of maps, plans, opinions, reports, surveys, designs or specifications and supervisory, inspection, engineering, or data processing services.



**PART III - GENERAL CONDITIONS**

The insurance provided under Part I is subject in all respects to the Exclusions set out in Part II and the General Conditions set out in this Part III. For the purpose of this Part III, the term **Named Insured** shall include any Additional Insureds hereunder and any **Indemnitee** of the **Named Insured** whose liability has been assumed in accordance with Part I, Section 2 of this policy.

**1. PERSONS INSURED**

**Named Insured** means the person or organisation named on the Declaration Page of this policy. Each of the following is a **Named Insured** under this insurance to the extent set forth below:

- A. if the **Named Insured** is designated in the Declaration Page as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the Named Insured with respect to the conduct of such a business;
- B. if the **Named Insured** is designated in the Declaration Page as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his or her liability as such;
- C. if the **Named Insured** is designated in the Declaration Page as other than an individual, partnership or joint venture, the organisation so designated and any executive officer, director or stockholder thereof while acting within the scope of his or her duties as such;
- D. Any person (other than an employee of the **Named Insured**) or organisation while acting as real estate manager for **the Named Insured**;
- E. with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,
  - i. an employee of the **Named Insured** while operating any such equipment in the course of his employment, and
  - ii. any other person while operating with the permission of the **Named Insured** any such equipment registered in the name of the **Named Insured** and any person or organisation legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organisation; provided that no person or organisation shall be a **Named Insured** under this paragraph E with respect to:
    - a.) **bodily injury** to any fellow employee of such person injured in the course of his employment; or
    - b.) **property damage** to property owned by, rented to, in charge of or occupied by the **Named Insured** or the employer of any person described in subparagraph E.ii.

This insurance does not apply to **bodily injury** or **property damage** arising out of the conduct of any partnership or joint venture of which the **Named Insured** is a partner or member and which is not designated in this policy as a **Named Insured**.





**2. ADDITIONAL PERSONS INSURED**

As respects bodily injury and property damage coverages, under the provisions of "Persons Insured", Section 1 above, each of the following is a **Named Insured** under this policy to the extent set forth below:

- A. Spouse - Partnership - if the **Named Insured** is a partnership, the spouse of a partner but only with respect to the conduct of the business of the **Named Insured**;
- B. Employee - Any employee (other than executive officers) of the **Named Insured** while acting within the scope of his duties as such, but the insurance afforded to such employees does not apply:
  - i. to **bodily injury** to another employee of the **Named Insured** arising out of or in the course of his employment;
  - ii. to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the **Named Insured**, or by the **Named Insured**, or if the **Named Insured** is a partnership or joint venture, by any partner or member thereof or by the spouse of any of the foregoing.

**3. AUTOMATIC COVERAGE - NEWLY ACQUIRED ORGANISATIONS (30 DAYS)**

The term **Named Insured** shall include any organisation which is acquired or formed by the **Named Insured** and over which the **Named Insured** maintains ownership or majority interest, other than joint venture, provided this insurance does not apply to **bodily injury** or **property damage** with respect to which such new organisation under this policy is also a **Named Insured** under any other similar liability or indemnity policy or would be a **Named Insured** under any such policy but for the exhaustion of its limits of liability. The insurance afforded hereby shall terminate 30 days from the date any such organisation is acquired or formed by the **Named Insured** unless the Underwriters are notified accordingly.

**4. ADDITIONAL INSURED PROVISION**

- A. It is agreed that, if required by written contract, any person, firm or organisation is included as an **Additional Insured** under this policy, but only with respect to operations performed by the **Named Insured** or to acts or omissions of the **Named Insured** in connection with the **Named Insured's** operations.
- B. The right of the **Named Insured** to include any person, firm or organization as an **Additional Insured** under this policy is subject to the following conditions precedent:
  - i. All duties and obligations imposed upon the **Named Insured** under this policy shall apply to any and all **Additional Insureds(s)** included under this provision;
  - ii. All duties and obligations imposed under this policy must be met in full by the **Named Insured** and the **Additional Insured** before any coverage is triggered under this policy in favour of the **Additional Insured**; and
  - iii. Any and all rights and benefits granted to an **Additional Insured** pursuant to this provision shall cease immediately, and without notice, upon the cancellation of this policy in accordance with Section 14 below.

**5. BLANKET WAIVER OF SUBROGATION ENDORSEMENT**

Underwriters waive their right of subrogation against any principal where waiver has been included as part of a contractual undertaking when required by written contract but only with respect to acts or omissions of the **Named Insured** in connection with the **Named Insured's** operations.



6. **CROSS SUITS ENDORSEMENT**

Coverage afforded by this policy does not apply to a claim for damages arising out of **bodily injury** or **property damage**, brought about by any **Named Insured, Additional Insured** or **Indemnitee** covered by this policy against any **other Named Insured, Additional Insured** or **Indemnitee** covered by this policy.

7. **"IN REM" ENDORSEMENT**

It is agreed that any loss, otherwise covered by this policy shall not be considered invalid even though asserted by an action "IN REM" instead of an action "IN PERSONAM".

Under no circumstances are Underwriters obligated to arrange, pay for, provide and/or post security in the form of a bond, letter of undertaking or otherwise to obtain the release of a vessel or other property of the **Named Insured** or any **Additional Insured** or **Indemnitee** under this policy.

8. **DEDUCTIBLE**

**It is a condition precedent to Underwriter's liability under this policy that the deductible shall be paid in full by the Named Insured and/or Additional Insured.**

Underwriters' obligation to pay any claim or expense under this policy applies only to the amount of compensatory damages in excess of the deductible amount shown on the Declaration Page, up to the applicable Limit of Liability. The Limit of Liability applicable to "Each Occurrence" will be reduced by the amount of the deductible.

This deductible amount applies to all such damages because of **bodily injury** and **property damage** as a result of any one occurrence regardless of the number of persons or organisations who sustain damages because of that occurrence. The deductible amount applies to all such claims for damages because of **personal injury** or **advertising injury** arising out of an offence or occurrence during the policy period.

The deductible amount also applies to **Costs of Defence And Related Payments** under Section 11 below.

9. **LIMITS OF LIABILITY**

Regardless of the number of (1) **Named Insureds, Additional Insureds** and/or **Indemnitees** under this policy, (2) persons or organisations who sustain **bodily injury** or **property damage**, or (3) claims made or suits brought on account of **bodily injury** or **property damage**, Underwriters' liability is limited as follows:

- A. The total liability of Underwriters for **bodily injury** and **property damage** combined, including **Costs of Defence and Related Payments** (as provided in Section 11 below), and any prejudgment or post-judgment interest, shall not exceed the applicable Aggregate Limit of Liability stated on the Declaration Page applied as follows:
  - i. the products hazard and completed operations hazard combined, referred to as the Products and Completed Operations Aggregate;
  - ii. all other coverages combined, except the products hazard and completed operations hazard, referred to as the General Aggregate.
  
- B. The Limit of Liability stated on the Declaration Page as applicable to "Each Occurrence" is the total limit of the Underwriters' liability for **bodily injury** and **property damage** combined, including **Costs of Defence and Related Payments** (as provided in Section 11 below), and any prejudgment or post-judgment interest, claimed against or sustained by one or more **Named Insured, Additional Insured** and/or **Indemnitee** collectively, arising out of one occurrence.



- C. For the purpose of determining the limit of the Underwriters' liability, all claims for all **bodily injury and property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.
- D. The **Aggregate Limit** shall be the maximum limit of Underwriters' liability under the policy during the policy period regardless of the number of separate occurrences or the number of claims during the period.
- E. The **Products Aggregate Limit** shall be the maximum limit of Underwriters' liability under the policy during the policy period for all products claims covered by the policy.
- F. The limits of liability apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**10. CONTROL AND DEFENCE OF CLAIMS**

- A. As provided in the Paramount Clause at the outset of this policy, Underwriters will have no duty to defend the **Named Insured, Additional Insured(s) and/or Indemnitee(s)** against any actual or anticipated claim for liability, loss, damage, costs, legal fees or expenses to which this policy does not apply.
- B. Underwriters shall have the sole right, at their option, of naming adjusters, investigators, surveyors and/or attorneys to represent the **Named Insured** or any **Additional Insureds or Indemnitees** under this policy in the investigation and/or defence of any claim which is covered under this policy. Underwriters may exercise exclusive direction and control of said investigation and defence.
- C. In the event of any actual or anticipated claim or suit against the **Named Insured** in which an **Additional Insured** and/or an **Indemnitee** is also named as a party to the claim or suit, Underwriters will cover the **Costs of Defence and Related Payments** (as set forth in Paragraph 11) for such **Additional Insured** and/or **Indemnitee** subject to the following conditions:
  - i. The claim or suit against the **Indemnitee** seeks damages for which the **Named Insured** has assumed the liability of the **Indemnitee** under an **incidental contract** within the meaning of Section II of Part I of this policy;
  - ii. The coverage provided under this policy applies to such liability assumed by the **Named Insured**;
  - iii. The obligation to defend, or the costs of defence and related payments of, the **Indemnitee**, has also been assumed by the **Named Insured** under the **incidental contract** ;
  - iv. The **Named Insured, Additional Insured** and/or **Indemnitee** agree that Underwriters can assign the same counsel to defend the **Named Insured, Additional Insured** and/or **Indemnitee** to the extent permissible under the laws of the relevant jurisdiction; and
  - v. The **Additional Insured** and/or **Indemnitee** agree(s) in writing to:
    - a. Be bound by all of the terms, conditions and exclusions of this policy and any and all endorsements appended hereto;
    - b. Notify, and make a claim against, any other insurer whose coverage is available to the **Additional Insured** and/or **Indemnitee** with respect to the claim or suit; and
    - c. Cooperate with Underwriters with respect to coordinating and collecting other applicable insurance available to the **Additional Insured** and/or **Indemnitee**.



**11. COSTS OF DEFENCE AND RELATED PAYMENTS**

Underwriters will pay, as part of and not in addition to, the applicable limit of liability:

- A. All Attorneys' fees, legal fees, filing fees, costs, charges, disbursements and/or other expenses incurred by, or with the authorisation of Underwriters in the defence of any claim covered under the policy, all costs taxed against the **Named Insured** or an **Additional Insured** or **Indemnitee** in such claim or suit and all interest on the entire amount of any judgement therein which accrues after entry of the judgment and before the Underwriters have paid or tendered or deposited in court that part of the judgement which does not exceed the limit of the Underwriters liability thereon;
- B. premiums on appeal bonds required in any such claim or suit and the cost of bail bonds required of the **Named Insured** or an **Additional Insured** or **Indemnitee** because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed two hundred and fifty (250) dollars per bail bond, but the Underwriters shall have no obligation to apply for or furnish any such bonds;
- C. expenses incurred by the **Named Insured, Additional Insured** or **Indemnitee** for first aid to others at the time of an accident, for bodily injury to which this policy applies;
- D. reasonable expenses incurred by the **Named Insured, Additional Insured** or **Indemnitee** at Underwriters' request in assisting the Underwriters in the investigation or defence of any claim or suit, including actual loss of earnings not to exceed one hundred (100) dollars per day.

**12. PREMIUM**

All premiums for this policy shall be computed in accordance with the Underwriters rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as advance premium is a deposit premium only, to be payable to the Underwriters within sixty (60) days of the attachment of the policy unless otherwise agreed, and which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period), the earned premium shall be computed for such period and, upon notice thereof to the **Named Insured**, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Underwriters shall return to the **Named Insured** the unearned portion paid by the **Named Insured**, subject to the Annual Minimum Premium stated in the Declaration Page.

If the premium for this policy is a flat premium, it is not subject to adjustment, except that additional premiums may be required for any additional coverages or as provided for in the Cancellation condition.

The **Named Insured** shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Underwriters at the end of the policy period and at such times during the policy period as the Underwriters may direct. It is warranted that the **Named Insured** shall send copies of such records to Underwriters to be received within sixty (60) days of the end of the policy period. In the event of any additional premium being incurred, such premium shall become payable within thirty (30) days of notification of an adjustment to the **Named Insured's** London broker.



**13. INSPECTION AND AUDIT**

Underwriters shall be permitted but not obligated to inspect the **Named Insured's** property and operations at any time. Neither the Underwriters' right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **Named Insured** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

Underwriters may examine and audit the **Named Insured's** books and records at any time during the policy period and extensions thereof and within three (3) years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

**14. CANCELLATION**

This policy may be cancelled by the **Named Insured** by surrender thereof to the Underwriters or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. This policy may be cancelled by Underwriters by mailing to the Named Insured's London broker written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective; provided, however, if such cancellation is for non-payment of premium, Underwriters are required to give only at least ten (10) days notice. Delivery of such written notice either by the **Named Insured** or by Underwriters to the **Named Insured's** London broker shall be equivalent to mailing. Proof of the mailing of the notice to the **Named Insured's** London broker shall be sufficient proof of notice to the **Named Insured** and any **Additional Insureds** or **Indemnitees** under this policy. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. If the **Named Insured** cancels, earned premium shall be computed in accordance with the customary short rate table procedure for the period this policy is in effect, applied to the premium developed in accordance with the Premium Condition of this policy, subject to the short rate amount of the Minimum Annual Premium stated in this policy, but in no event shall the earned premium be less than the Minimum Earned Premium stated in this policy. In the event of a loss or occurrence under this policy which is notified to Underwriters prior to the date of termination, and which gives rise to a valid claim under this policy, then the total advance premium shall become payable. If Underwriters cancel, earned premium shall be computed pro rata of the premium developed in accordance with the Premium Condition of this policy subject to the pro rata amount of the Minimum Annual Premium stated in this policy; provided, however, if Underwriters cancel for non-payment of premium, the premium shall be computed on the same basis as if the **Named Insured** cancels.

Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter. The cheque or other payment of Underwriters mailed or delivered to the **Named Insured's** London broker, shall be sufficient tender of any refund due the **Named Insured**. If this policy insures more than one **Named Insured**, cancellation may be effected by the one first named for the account of all **Named Insureds**. Notice of cancellation by Underwriters to such first **Named Insured's** London broker shall be notice to all **Named Insureds**, **Additional Insureds** and **Indemnitees**. Payments of any unearned premium to such **first Named Insured** shall be for the account of all **Named Insureds**, **Additional Insureds** and **Indemnitees**.

**The cancellation of this insurance by the Named Insured is binding upon, and effective against, any and all Additional Insureds and/or Indemnitees under this policy, whose rights and benefits shall cease immediately, and without notice, upon the cancellation of this policy by the Named Insured.**

**15. INSOLVENCY**

The insolvency, bankruptcy, receivership or any refusal or inability to pay of the **Named Insured** or any **Additional Insured** or **Indemnitee** and/or any other insurer and/or any other Underwriter shall not operate to:

- A. increase Underwriters' liability under this policy; and/or
- B. increase any Underwriters' share of liability under this policy.

**16. OTHER INSURANCE**

If other collectible insurance with any other insurer is available to the **Named Insured, Additional Insured** and/or **Indemnitee** covering a loss also covered hereunder, this insurance shall be in excess of, and shall not contribute with such other insurance. Excess insurance over the limits of liability expressed in this policy is permitted without prejudice to this insurance and the existence of such insurance shall not reduce any liability under this policy.

**17. PROTECTION AND INDEMNITY COVER ELSEWHERE**

It is a condition of this Insurance that any and all vessels owned and/or operated by **the Named Insured** or any **Additional Insureds** or **Indemnitees** are separately insured for Protection and Indemnity risks no less broad than the terms of Protection and Indemnity Form SP-23 (Revised 1/56) up to the limit of this policy.

**18. POLLUTION RESPONSIBILITY**

This insurance does not constitute evidence of financial responsibility under the Oil Pollution Act of 1990 or any similar federal or state law and it is a condition of this insurance that it shall not be submitted to the United States Coast Guard or any other federal or state agency as evidence of financial responsibility. Underwriters do not consent to be guarantors or to otherwise extend their duties or obligations in any manner beyond those stated in this policy.

**19. DUTIES OF NAMED INSURED, ADDITIONAL INSURED AND INDEMNITEES IN THE EVENT OF OCCURRENCE OR SUIT**

- A. In the event of any accident or occurrence which may result in a loss, damage and/or expense for which Underwriters are or may become liable under this policy, the **Named Insured** and/or any **Additional Insureds** or **Indemnitees**, shall:
- i. Give Underwriters, as soon as possible, notice of any such accident or occurrence;
  - ii. Take such steps to protect its, and Underwriters, interests as would reasonably be taken in the absence of this or similar insurance.
  - iii. Immediately forward to Underwriters every demand, notice, summons, process or other paper of any kind relating to such claim.
  - iv. Co-operate with Underwriters, and upon Underwriters' request, assist in making settlements and in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organisation who may be liable to the **Named Insured, Additional Insureds** and/or **Indemnitees** because of injury or damage with respect to which insurance is afforded under this policy; and the **Named Insured, Additional Insureds** and/or **Indemnitees** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Named Insured, Additional Insureds** and/or **Indemnitees** shall not, except at his or her own cost, voluntarily make any payment, assume any obligation, admit any liability, or incur any expense other than for first aid to others at the time of accident.
- B. This insurance shall be void and of no force or effect, in respect of any accident or occurrence in the event the **Named Insured, Additional Insureds** and/or **Indemnitees** shall make or shall have made any admission of liability either before or after such accident or occurrence.



**20. SUBROGATION**

In the event of any payment under this policy, the Underwriters shall be subrogated to all the **Named Insured's, Additional Insured(s)' and/or Indemnatee(s)'** rights of recovery thereof against any person or organisation and the **Named Insured, Additional Insured and/or Indemnatee** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

In the case of any agreement or act, past or future, by the **Named Insured, Additional Insured or Indemnatee** whereby any right of recovery of the Insured against any person or entity is released or lost which would, on payment of loss by Underwriters belong to Underwriters but for such agreement or act, this insurance shall be void and/or vitiated to the extent Underwriters' right of subrogation has been impaired thereby.

**21. ASSIGNMENT**

Any purported assignment of interest under this policy shall not be permitted and shall not bind Underwriters until their consent is endorsed hereon; if however, the **Named Insured, Additional Insured or Indemnatee** shall die, such insurance as is afforded by this policy shall apply (1) to the legal representative of the **Named Insured, Additional Insured or Indemnatee**, as the **Named Insured, Additional Insured or Indemnatee**, but only while acting within the scope of his duties as such, and (2) with respect to the property of the **Named Insured, Additional Insured or Indemnatee** to the person having proper custody thereof, as **Named Insured, Additional Insured or Indemnatee**, but only until the appointment and qualification of the legal representative.

**22. DEFINITIONS**

When used in this policy (including endorsements forming a part hereof):

**automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

**bodily injury** means bodily injury, sickness, or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

**claim** means a written notice received by the Insured of an intention to hold the Insured responsible for an occurrence covered by this policy, and shall include any Law and Practice and Service of Suit proceedings against the Insured;

**completed operations hazard** includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- A. when all operations to be performed by or on behalf of the **Named Insured** under the contract have been completed; or
- B. when all operations to be performed by or on behalf of the **Named Insured** at the site of the operations have been completed; or
- C. when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organisation other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



**CONT.**

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency but which are otherwise complete shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of:

1. operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof; or
2. the existence of tools, uninstalled equipment or abandoned or unused materials.

**impaired property** means tangible property, other than the **Named Insured's** products, that cannot be used or is less useful because: (1) it incorporates the **Named Insured's** products or the **Named Insured's** work that are known or thought to be defective, deficient, inadequate or dangerous; or (2) the **Named Insured** has failed to fulfill the terms of a contract or agreement; if such property can be restored to use by (a) the repair, replacement, adjustment or removal of the **Named Insured's** products or the **Named Insured's** work or (b) the **Named Insured's** fulfilling the terms of the contract or agreement.

**incidental contract** means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement.

**Mobile equipment** means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the **Named Insured**, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.

**Named Insured's products** means goods or products manufactured, sold, handled or distributed by the **Named Insured** or by others trading under his name, including any container thereof (other than a vehicle), but the **Named Insured's** products shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold.

**Named Insured's work**

- A. work or operations performed by or on behalf of the **Named Insured**; and
- B. materials, parts or equipment furnished in connection with such work or operations.

**Named Insured's work** includes:

- A. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Named Insured's** work; and
- B. the providing of or failure to provide warnings or instructions.

**occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.





**policy territory** means:

- A. the United States of America, its territories or possessions or Canada; or
- B. international waters or air space, provided the **bodily injury** or **property damage** does not occur in the course of travel or transportation to or from any other country, state or nation; or
- C. anywhere in the world with respect to damages because of **bodily injury** or **property damage** arising out of a product which was sold for use or consumption within the territory described in paragraph A above, provided the original suit for such damages is brought within such territory.

**products hazard** includes **bodily injury** and **property damage** arising out of the **Named Insured's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from the premises owned by or rented to the **Named Insured** and after physical possession of such products has been relinquished to others;

**property damage** means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

When used as a premium basis:

**admissions** means the total number of persons, other than employees of the **Named Insured**, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes.

**costs** means the total cost to the **Named Insured** with respect to operations performed for the **Named Insured** during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labour, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances bonuses or commissions made, paid or due.

**receipts** means the gross amount of money charged by the **Named Insured** for such operations by the **Named Insured** or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes other than taxes which the **Named Insured** collects as a separate item and remits directly to a governmental division.

**remuneration** means the entire remuneration earned during the policy period by proprietors and by all employees of the **Named Insured**, other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the rules and rates in use by the Underwriters.

**sales** means the gross amount of money charged by the **Named Insured** or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the **Named Insured** and such others collect as a separate item and remit directly to a governmental division.



**23. NO ACTION CLAUSE**

No action shall lie against Underwriters for the recovery of any loss sustained by the **Named Insured** or any **Additional Insured** or **Indemnitee** unless such action is brought against Underwriters within one (1) year after the final judgment or decree is entered against the **Named Insured, Additional Insured** or **Indemnitee** or in the case the claim under the policy accrues without the entry of such final judgment or decree, unless such action is brought within one (1) year of the date of payment of the claim; provided however that where such limitation of time is prohibited or limited by law, statute or public policy, then and in that event no action under this policy shall lie against Underwriters unless brought within the shortest limitation period permitted under such law, statute or public policy.

**24. CHANGES**

The terms, conditions and exclusions of this policy, and any endorsement(s) appended hereto, may only be changed or waived upon the issuance of a written endorsement forming part of this policy.

**25. SEVERABILITY**

A finding that a particular provision of this policy, or any endorsements appended thereto, is unenforceable or otherwise against a statute, law or public policy shall not affect the enforceability of any other provision of the policy or its endorsements.

**26. INTERPRETATION OF POLICY AND ENDORSEMENTS**

This policy, and any endorsements appended thereto, shall be interpreted in a manner which reflects the plain meaning of the policy and any endorsement(s) when read together. In the event of a conflict between the provisions of the policy and a particular endorsement(s), the terms of the endorsement(s) shall prevail over any conflicting provision in the policy.

**27. THOMAS MILLER SPECIALTY LAW AND PRACTICE CLAUSE (1.04.96)**

Notwithstanding anything other provision in this policy or any endorsement(s) appended hereto, this insurance is subject to English law and practice. Any dispute arising under, relating to, or in connection with this insurance is to be referred to Arbitration in London, one Arbitrator to be nominated by the **Named Insured, Additional Insured** and/or **Indemnitee** and the other by Thomas Miller Specialty on behalf of Underwriters. The Arbitration shall be conducted pursuant to exclusive supervision of the English High Court of Justice. In case the Arbitrators shall not agree, then the dispute shall be submitted to an Umpire to be appointed by them. The award of the Arbitrators or the Umpire shall be final and binding upon all parties. In the event of a conflict between this clause and any other provision of this insurance, this clause shall prevail and the right of either party to commence proceedings before any Court or Tribunal in any other jurisdiction shall be limited to the compelling of arbitration in accordance with this provision or for the process of enforcement of any award hereunder.



**28. THOMAS MILLER SPECIALTY SERVICE OF SUIT CLAUSE**

Subject in all respects to the Thomas Miller Specialty Law and Practice Clause (1/04/96) in Clause 27 above, it is agreed that in the event of the failure of Underwriters severally subscribing this insurance (the Underwriters) to pay any amount claimed to be due hereunder, Underwriters, at the request of the **Named Insured, Additional Insured** and/or **Indemnitee**, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America.

It is agreed that Underwriters have the right to commence an action in any court of competent jurisdiction in the United States of America, and nothing in this clause constitutes or should be understood to constitute a waiver of Underwriters' rights to remove an action to a United States Federal District Court or to seek remand therefrom or to seek a transfer of any suit to, or a dismissal in favour of, any other court of competent jurisdiction as permitted by the laws of the United States of America or any state therein.

Subject to Underwriters' rights set forth above:

- (a) It is further agreed that the **Named Insured**, and any **Additional Insureds** and **Indemnitees** may serve process upon any senior partner in the firm of Mendes & Mount (Attorneys), 750 Seventh Avenue, New York N.Y. 10019-6829 and that in any suit instituted against any one of them upon this contract Underwriters will abide by the final decision of the Court or of any Appellate Court in the event of an appeal.
- (b) The above named are authorised and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **Named Insured, Additional Insured** or **Indemnitee** to give a written undertaking that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.
- (c) The right of the **Named Insured, Additional Insured** or **Indemnitee** to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purpose of suit as herein provided the term "**Named Insured**" shall include any mortgagee under a ship mortgage which is specifically named as a loss payee in this insurance and any person succeeding to the rights of any such mortgagee.
- (d) Further, pursuant to any statute of any state, territory or district of the United States of America which makes provision therefore, Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office (the Officer), as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Named Insured, Additional Insured** and/or **Indemnitee** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the Officer is authorised to mail such process or a true copy thereof.

